



injury. Instead, the respondent argues claimant's psychological problems are related to her personal problems and are not compensable.

Claimant argues the ALJ's Order should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The claimant had received psychiatric treatment for depression and anger before she was employed by respondent. Her treatment had consisted of psychotherapy and medications. The psychotherapy ended before she began her employment with respondent and she gradually discontinued taking the medications. But after receiving medical treatment as a result of her work-related injuries claimant again began to experience problems she identified as depression. She expressed that she was sad and had crying spells as well as anger over her perceived mistreatment by the insurance carrier.

At claimant's attorney's request, the claimant was examined and evaluated by Dr. Ethan E. Bickelhaupt on June 14, 2006. Dr. Bickelhaupt diagnosed the claimant with depression and anxiety secondary to pain and her work-related injury, pain disorder secondary to multiple physical injuries and obsessive/compulsive disorder which is fairly recent. Dr. Bickelhaupt recommended medications to address her depression, anxiety and pain. Non-pharmacologic interventions would include biofeedback, physical therapy and psychological therapy.

At respondent's attorney's request, the claimant was examined and evaluated on August 8, 2006, by Dr. Patrick L. Hughes. Dr. Hughes diagnosed claimant with a pain disorder with psychological factors only and he further opined that claimant was malingering her pain complaints. Dr. Hughes further diagnosed claimant with major depression and that she demonstrated histrionic personality traits. But Dr. Hughes concluded that none of her conditions were caused or aggravated by her work-related injury.

As previously noted, the ALJ ordered an independent medical examination (IME) of claimant by Dr. James R. Eyman to determine whether or not her work-related injury aggravated, or accelerated the claimant's psychological condition. The claimant was seen on September 29, October 17 and October 24, 2006. Claimant was administered the Personality Assessment Inventory which she completed. Dr. Eyman testified the claimant was not malingering and that the test results were consistent with his interview. Dr. Eyman diagnosed the claimant with a depressive order not otherwise specified as well as pain disorder with both psychological factors and a general chronic medical condition. Dr. Eyman opined the depressive and pain disorders are directly related to her work-related

injury. The doctor further determined that there was no indication that she was depressed or experiencing pain prior to her injury. Dr. Eyman recommended psychotherapy to address the claimant's depression and pain disorder. Dr. Eyman further opined the claimant has not reached maximum medical improvement for her depression and pain disorder.

In order for claimant to establish a compensable psychiatric condition, she must prove that it is directly traceable to the work-related physical injury.<sup>1</sup> Moreover, a preexisting mental condition which is aggravated, accelerated or intensified by a work-related physical injury is compensable.<sup>2</sup>

All the doctors diagnosed claimant with pain disorder and claimant had not been diagnosed with this condition until after her work-related physical injuries. Consequently, this condition was not preexisting. Drs. Bickelhaupt and Hughes disagreed whether the pain disorder was directly traceable to the work-related physical injury and the ALJ ordered an independent medical examination which resulted in Dr. Eyman's opinion that claimant's pain disorder was directly related to her work-related physical injury. The ALJ found Dr. Eyman's opinion persuasive. This Board Member agrees and affirms.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated February 19, 2007, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2007.

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BOARD MEMBER

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<sup>1</sup> *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 456 (1994).

<sup>2</sup> *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469 (1998).

<sup>3</sup> K.S.A. 44-534a.

<sup>4</sup> K.S.A. 2006 Supp. 44-555c(k).

c:     Jeff K. Cooper, Attorney for Claimant  
       James C. Wright, Attorney for Respondent and its Insurance Carrier  
       Brad E. Avery, Administrative Law Judge